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Since the Massachusetts justices reject the average cost per passenger as a criterion of reasonableness in charges, it would seem incumbent upon them to present some rule of mathematics whereby the points they suggest could be applied in estimating the reasonableness of rates. Their reasoning is liable to the criticism made by another court, where an effort to show that a probable increase in passengers would make up for a reduction in rate was held to furnish no reliable basis for decision, being "too speculative an argument for acceptance." *Milwaukee Electric R. Co. v. Milwaukee*, 87 Fed. 577, 578.

THE MEASURE OF DAMAGES IN CONVERSIONS BY STOCK BROKERS.

The ease with which the English system of common law can be molded to meet the exigencies of modern business is aptly illustrated in the evolution of the rule of damages in conversion, where the subject of the conversion is liable to rapid fluctuation in value, as is the case with stocks or bonds in the hands of a broker. Out of a conflict which seemed for the time utterly hopeless, the courts have gradually produced a rule which is now being rapidly seized upon as affording a just and safe criterion. This is stated with extreme lucidity in the twin cases of *Federal Stock & Grain Co. v. Wiggins*, 77 Conn. 507, and *Ling v. Malcom*, 77 Conn. 517. Both cases arose out of an unauthorized conversion of stocks in the hands of a broker, and the rule was there given as follows: "The correct measure of the plaintiff's damage was, therefore, the excess, if any, over the price realized (at the sale on June 10th) of the lowest sum for which he could have placed the stocks after notice of the sale, had he given an order to that effect with reasonable promptness; or, in case of fluctuations of market price between the wrongful sale and the latest day to which it would have been reasonable to defer a repurchase, the difference, if any, between the price obtained when the shares were converted and the highest market price, in excess thereof, attained during that period."

Three rules for the computation of damages in cases of this character have been adopted by the various courts. In a few states it is held that the value of the stock at the time of the conversion should furnish the standard of measurement. *Freeman v. Harwood*, 49 Me. 195; *Baltimore Ins. Co. v. Dalrymple*, 25 Md. 269; *Brylan v. Huguet*, 8 Nev. 345. It is obvious, however, that this rule leaves the customer at the mercy of his broker, and the rule has received but limited indorsement.

The first rule to be adopted by influential courts was that damages for the conversion of stock should be computed upon the basis of the highest price intermediate the conversion and the time of trial. This rule originated in, and is still followed by, the English courts. *Cud v. Rutts*, 1 P. Wms. 572; *Harrison v. Harrison*, 1 C. & P. 412, 11 E. C. L. 436; *Owen v. Routh*, 14 C. B. 372. When cases involving the point arose in the United States the tendency was to follow the English cases. *Romaine v. Allen*, 26 N. Y. 309; *West v. Pritchard*, 19 Conn. 212; but the rule was found to be inequitable in many cases, as it practically allowed the

party bringing suit to delay his action, and thus increase in many instances the amount of his damages. The rule continues, however, to be followed in a few states. *Sturgis v. Keith*, 57 Ill. 451; *Parsons v. Martin*, 11 Gray (Mass.) 111; *Neiler v. Kelley*, 69 Pa. St. 403, 408. In the latter state it has been limited to those cases where a relation of trust exists between the parties, and, where a transfer of stock was permitted by a bank on a forged power of attorney, there being no breach of trust, the value at the time of the conversion was accepted as a criterion. *In re Jamison & Co.'s Est.*, 163 Pa. St. 143; *Ins Co. v. Phila., etc., R. R. Co.*, 153 Pa. St. 160. In some states the English rule has been adopted by statute, but the courts have required the complainant to proceed without unreasonable delay, and where this was not done, have estimated upon the basis of the value at the time of conversion. *Fargo First Nat. Bk. v. Minn. Elevator Co.*, 8 N. Dak. 430.

The case of *Romaine v. Allen*, *supra*, opened the eyes of the New York courts to the dangers of the English rule. In that case the trial was a protracted one before a referee, and the stock, which was worth \$3,937.50 at the time of conversion, rose to \$8,175 during the course of the trial. This was allowed by the referee as damages. When the subject came again before the Court of Appeals in *Baker v. Drake*, 53 N. Y. 211, 217, the decision in *Romaine v. Allen* was reversed, and the now prevailing rule adopted. This was subsequently reaffirmed in *Wright v. Bank of Metropolis*, 110 N. Y. 237, and by the Federal Supreme Court in *Galigher v. Jones*, 129 U. S. 193. The rule in these cases, and as it is more clearly stated by the Connecticut court, is now adopted by the majority of the states. *Citizens' St. Ry. Co. v. Robbins*, 144 Ind. 671; *Dimock v. U. S. Nat. Bk.*, 55 N. J. L. 296; *Ralston v. Bk.*, 112 Cal. 208. Although severely criticized by Mr. Sedgwick in his work on Damages, it has the advantage of affording the complainant a just and equitable relief without either giving him the opportunity to speculate upon his damages upon one hand, or on the other, of imposing a harsh and excessive punishment upon the debtor. *Sedgwick, Damages*, sec. 508, *et seq.* Where the stock has not advanced, under the prevailing rule, the complainant can obtain only nominal damages. *Taussig v. Hart*, 58 N. Y. 425.

It is interesting to note that the Connecticut court held it necessary to plead as special damage the fact that the stock had risen in value between the time of conversion and the time when it might have been replaced, and would not allow proof of that fact to be admitted under the general claim for damages.

DISCRIMINATION IN THE TAXATION OF STATE AND NATIONAL BANKS.

The question has several times arisen of what constitutes discrimination in the taxation of state and national banks, under *U. S. Rev. St.*, Sec. 5219, which exempts all the property of national banks, not including real estate within the taxing state; but provides for the taxation of the stock of such banking corporations, further providing that the stock shall not be taxed at a greater rate